IN THE

SUPREME COURT OF THE UNITED STATES

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

M. M. MEREDITH, *Petitioner-Appellant,*

vs.

MARTIN D. VAN OOSTERHOUT,
Respondent-Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

OPINIONS BELOW.

On April 5th, 1960, the United States District Court for the Southern District of Iowa, Western Division dismissed petitioner's Complaint (Petition at Law) because same did not state a claim upon which relief could be granted. Said Complaint had asked that petitioner be granted a monetary judgment against respondent. (R. 35, R. 36),

On December 21, 1960, the United States Circuit Court for the Eighth Circuit affirmed the aforesaid holding; and

added that the reason for the same was that the allegations contained in said Complaint revealed that respondent would be entitled to the defense of "judicial immunity" against all charges therein made. Decree entered the same day. (Certified copy included herewith).

STAY OF MANDATE.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT.

January 4, 1961.

Re: No. 16528, M. M. Meredith vs. Martin D. Van Oosterhout.

Dear sirs: We have today entered an order in the above case staying issuance of mandate for 30 days and providing further that within that time there is filed with us a certificate of the Clerk of the Supreme Court of the United States that a petition for a writ of certiorari and record have been filed, the stay granted shall continue until the final disposition of the case by the Supreme Court.

Very truly yours,

Robert C. Tucker,
Clerk.

JURISDICTION.

Jurisdiction to review this case upon a Writ of Certiorari is conferred upon this Court by Section 1254 (1), Title 28, U.S.C.A.

QUESTIONS PRESENTED FOR REVIEW.

No. 1. Do the allegations in the Complaint reveal that respondent, while acting as a judge, knowingly exercised a usurped authority and therefore was not entitled to the defense of judicial immunity?

No. 2. Does the record reveal that this case was not within the jurisdiction of a federal court because it arose under the common law and there was no diversity of citizenship?

No. 3. Does the record reveal that the removal of this case from a state court to a federal court was an illegal act because under the conditions then prevailing said removal constituted a violation of the 5th Amendment to the Constitution? (R. 22.)

CITATION OF CONSTITUTIONAL PROVISIONS, STATUTES, ETC., QUOTED VERBATIM IN APPENDIX.

Subsections (a), (1) and (3) of Section 1442, Title 28, U.S. Code. (Page ..... of official Code. Verbatim Appx. A16)

Fifth Amendment to U. S. Constitution. (1939 Edition of Code of Iowa, page xiii. Verbatim Appx. A16-A17)

Paragraph One of Section 2 of Article III of U.S. Constitution. (1939 Edition of Code of Iowa, page xiii. Verbatim Appx. A17) Also Tenth Amendment to the Constitution.

Portion of the Opinion in *Bradley* v. *Fisher*, 13 Wallace 335. Field, J., 1871. (Page 352 of official Supreme Ct. Reports. Verbatim Appx. A18)

Section 1441 (b), Title 28, U.S.C. (Page ... of official Code. Verbatim Appx. A18)

Portion of the official records of the United States Court of Appeals for the Eighth Circuit. (Page 11 and following pages and pages 33 and 36 in certified copy of record of said court, said certified copy having been filed in the Supreme Court in connection with Application for Writ of Certiorari No. 16036, *Meredith* v. *John Deere Plow Co.*, referred to at 346 U.S. 898, Nov. 30, 1953. Verbatim Appx. A19)

STATEMENT OF FACTS.

Section 1442, Title 28, U.S.C.A. (Verbatim Appx. A16) authorizes federal courts to adjudicate cases of a certain type. Petitioner, an Iowan, commenced an action of this type in an Iowa state court. He asked that court to award him a monetary judgment against respondent, another Iowan, because respondent, while acting as a public official, had violated a duty imposed upon all public officials by the common law; and by said violation had inflicted injuries upon petitioner in Iowa. Petitioner alleged that respondent had failed to perform his official acts honestly and in good faith (R. 1, R. 2). Immediately afterwards, petitioner, in the form of a Motion, asked said Iowa state court not to permit this case to be removed to any federal court. One reason: If given the opportunity, petitioner could prove to said state court that he could not get a fair trial of this case in any federal court. (R. 22). Before said Motion had been adjudicated by said Iowa state court, and despite petitioner's protests (R. 31, R. 34) this case was removed to a federal district court. Both federal courts (district ct. and ct. of appeals) then held this case should be dismissed with prejudice because the allega-

tions contained in its Complaint revealed that respondent readily could defeat all charges therein contained by utilizing the defense of "judicial immunity." (R. 32, R. 35, and Opinion of Ct. of Appeals).

Here are some of those allegations which were contained in petitioner's said Complaint, to wit:

First: Respondent, while acting as judge of a federal court of appeals, officially required petitioner to disclose, involuntarily, that he intended to sue one, A, jointly with two Iowa citizens on the charge that all three of them, acting together, had violated the law of Iowa and by said violation had injured petitioner in Iowa. That he (petitioner) intended to bring said suit in some state court (R. 6, R. 7, R. 8).

Next: Respondent publicly and officially recommended that some federal district court should prevent petitioner from suing A at all on said charges. (R. 7):

Next: A certain federal district court ordered petitioner not to start any civil action, based on said charges against A, in any court either state or federal. (R. 8). Also not to report to any Iowa authorities the fact that he claimed to possess evidence to the effect that A had committed an Iowa felony in Iowa. (R. 10, R. 11, R. 12).

Said federal district court cited respondent's aforesaid recommendation as its authority for issuing said Order. (R. 8).

Finally: Respondent, while acting as judge of a federal court of appeals, affirmed the legality of said Order. (R. 11, R. 12).

ARGUMENT.

Concerning Question No. 1: Does a portion of the decision in *Bradley* v. *Fisher*, 13 Wallace 335 (Appx. A18), when combined with Section 1441(b), Title 28, U.S.C.A. (Sep. Appx. No. V), hold that when a federal judge officially orders an individual not to start some action in a state court—an action which is exclusively within the jurisdiction of state courts—that then said federal judge knowingly exercises a usurped authority; and, for that reason, is not entitled to utilize the defense of "judicial immunity" in a suit brought against him—a suit occasioned by said Order?

Concerning Question No. 2: If a duly elected or appointed public official inadvertently fails to take the oath of office, is he then free to perform his official acts dishonestly and in bad faith? When there is no diversity of citizenship, does any provision in paragraph One, Section 2, Article III of the Constitution (Appx. A17) empower federal courts to adjudicate cases arising under the common law?

Concerning question No. 3: Since the decision rendered by the federal courts in this case was adverse to petitioner, does it now appear that petitioner was deprived of his property without due process of law when, because said action was removed before the state court adjudicated his Motion, he lost the opportunity to have said Motion adjudicated by an impartial tribunal?

Additional Argument: The outcome of this case is a matter of vital importance to every retailer for, in the past, hundreds of retailers have suffered crushing loss—in some instances financial ruin—by being victimized with

the following swindle, to wit: A manufacturer contacts a retailer who operates a store in a territory where there is little or no commercial demand for the manufacturer's products. The manufacturer then makes an attractive proposal to this retailer—a proposal whereby this retailer will become the exclusive distributor of the manufacturer's products in this territory. The outstanding feature of this proposal, or offer, is this promise which the manufacturer therein makes to the retailer. This promise is that if or when the retailer accepts the manufacturer's said proposal or offer, then the business relationship between the two, thus created, will endure until the occurrence of one or other of the following three events, to wit: (1) Until the manufacturer abandons the attempt to have his products distributed in this territory. (2) Until the manufacturer establishes that the retailer has been guilty of grave fault in conducting the affairs of the retailer's said distributorship. (3) Until the retailer notifies the manufacturer that he no longer desires to retain said distributorship.

However, the manufacturer when he makes said promise to the retailer has no intention of honoring it. Instead, he intends to continue this business relationship only until he gets into a better bargaining position—into a bargaining position whereby he can enter into a similar business relationship with some second retailer in this territory but on terms more advantageous to himself. The manufacturer has high hopes of eventually attaining this better bargaining position because he knows that if the first retailer performs the duties of his distributorship loyally and with reasonable efficiency, the commercial demand for the manufacturer's products in this territory is bound to increase. If and when he does attain this better bargaining position, the manufacturer brazenly breaks the promise which he made to the first retailer—breaks the same by summarily severing all business relations with the first retailer. Then

the manufacturer proceeds to bargain with some second retailer in this same territory. Universally, courts hold that the first retailer—the disillusioned one—is without legal redress or remedy whatsoever for the loss which said severance almost invariably inflicts upon him. That he has no legal recourse on the ground of unjust enrichment, nor on the ground of breach of contract, nor on the ground of fraud. It is a widely held opinion that when judges make this ruling they thereby perform their official acts dishonestly and in bad faith. (Appx. A19)

CONCLUSION.

Wherefore, your petitioner prays that a Writ of Certiorari issue under Seal of this Court directed to the Court of Appeals for the Eighth Judicial Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Court of Appeals had in the case on its docket No. 16,528, *M. M. Meredith, Appellant,* v. *Martin D. Van Oosterhout, Appellee,* to the end that this cause may be reviewed and determined by this Court as provided by the Statutes of the United States: and that the judgment therein of the said Court of Appeals for the Eighth Circuit be reversed by the Court and for such further relief as to this Court may seem proper.

Dated at Atlantic, Iowa, this 10th day of January, A.D. 1961.

M. M. MEREDITH,
301 West Sixth Street,
Atlantic, Iowa,
Petitioner.

(Judgment.)

United States Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 16528 - - - - September Term, 1960.

M. M. Meredith,
Appellant,

vs.

Martin D. Van Oosterhout.

Appeal from the United States District Court for the Southern District of Iowa.

This cause came on to be heard on the record from the United States District Court for the Southern District of Iowa, and was argued by the appellant *pro se*, and by counsel for appellee.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the Order of the said District Court sustaining Motion of the defendant for summary judgment and dismissing the complaint in this cause be, and the same is hereby, affirmed.

December 21, 1960.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 16,528.

M. M. Meredith, Appellant,
vs.
Martin D. Van Oosterhout, Appellee.

Appeal from the United States District Court for the Southern District of Iowa.

[December 21, 1960.]

Before VOGEL, MATTHES and BLACKMUN, Circuit Judges.

PER CURIAM.

M. M. Meredith, the appellant herein, commenced this action on February 10, 1960, in Iowa state district court, asking a money judgment against the appellee, Martin D. Van Oosterhout, a duly appointed and qualified United States Circuit Judge for the Eighth Circuit. The complaint alleged that the appellant has been injured because the appellee, "acting in his official capacity * * * adjudicated Civil Action No. 15666 and Civil Action No.

16036"; "* * * that defendant [appellee] made the aforesaid two adjudications in bad faith; that he knowingly and intentionally made them in a dishonest manner; and that he thereby wantonly and maliciously violated the obligation which he had assumed when he took his oath of office." To the complaint the appellant attached and made a part thereof an "appendix", which document consisted of Counts 1 to 7, inclusive, wherein appellant claimed to set forth the "official acts" on which his claim was based. At the same time the appellant filed certain motions with the Iowa state district court: 1) asking that the state court rule that the case be not transferred to any federal court, mainly on the assertion that he had reasonable grounds for believing that he would be unable to obtain a fair hearing or trial of the case "in any federal court", that if appealed the appellate court would affirm the decision of the lower court and that an application for writ of certiorari to the Supreme Court would be denied; 2) that a hearing be had on his motions and that he be allowed to testify; 3) that no United States Attorney acting officially be permitted to participate in the case excepting when the motions were being considered.

On February 24, 1960, the appellee, acting by and through the United States Attorney for the Southern District of Iowa, who had been duly authorized by the Attorney General of the United States to represent him, filed petition and bond to remove the case to the United States District Court, pursuant to the provisions of §§ 1442 (a) and 1446, Title 28 U.S.C.A. After the case was removed, the appellant, on March 3, 1960, filed a motion in the Iowa state district court, asking that court to hold the removal null and void on the grounds that the removal was "illegal" and "* * * would have the effect of requiring plaintiff to submit an issue for decision to a court which he

has reasonable grounds for believing would not accord him a fair Hearing nor an honest Decision."

The appellee, through the United States Attorney, filed answer in the United States District Court alleging 1) that the appellant had failed to state a claim upon which relief could be granted; 2) that appellant's petition alleged that the appellee was a judicial officer of the United States of America during the commission of all the acts alleged and at all times material thereto; 3) that during the commission of all acts alleged by appellant and at all times material thereto appellee was a judicial officer of the United States of America and acting within the limits of his jurisdiction and that by reason thereof no action could lie against him; and 4) stated that he is and was during all times material a Judge of the United States Court of Appeals for the Eighth Circuit and that in his official capacity and as a member of such court he participated in the two civil actions referred to in the complaint and denied all other allegations of the complaint.

Thereafter, and on March 11, 1960, the appellee filed his motion for summary judgment upon the grounds that appellant had failed to state a claim upon which relief could be granted. Hearing on the motion was set for April 5, 1960. On March 29, 1960, appellant filed a "Limited Appearance of Plaintiff", mainly for the purpose of bringing to the attention of the United States District Court the fact that he had filed a motion with the state court claiming that the transfer or removal of the case was null and void. At the hearing on April 5, 1960, the appellant failed to appear either in person or by counsel. The District Court held that it had jurisdiction over the parties and the subject matter and sustained appellee's motion for summary judgment dismissing appellant's complaint with prejudice and costs. This appeal followed.

Appellant is a farm implement dealer in Iowa. He has been admitted to the bar of that state and appears in his own behalf. For a period of years (since 1950) he has been subjecting the John Deere Plow Company to a series of lawsuits instituted by him *pro se* and based on the theory that he has been deprived of certain alleged contractual rights to represent the Plow Company in Iowa territory. We take official cognizance of our records with reference thereto. The first of such suits, *Meredith* v. *John Deere Plow Co.*, 89 F. Supp. 787, was brought to recover damages for alleged breach by the Plow Company of his claimed oral contract of dealership or agency. The District Court dismissed because the relationship alleged was, on its face, one that under the law of Iowa was terminable at will and accordingly unenforceable. Such action was affirmed by the United States Court of Appeals on December 20, 1950, 185 F.2d 481, certiorari denied, 341 U.S. 936. A second suit on the same grounds was dismissed in the District Court and affirmed by the United States Court of Appeals on July 31, 1953, 206 F.2d 196, certiorari denied, 346 U.S. 898.

Meredith's alleged claim against the John Deere Plow Company was fully and conclusively adjudicated against him in the two foregoing cases. At the time such decisions were rendered, the appellee herein was not even a member of the United States Court of Appeals for the Eighth Circuit and did not and could not have participated in any way therein.

The two suits referred to in appellant's complaint and in which the appellee did participate as one of three judges followed the two cases just referred to and were based on the same subject matter. Civil Action No. 15,666 is *Meredith* v. *John Deere Plow Co.*, 244 F.2d 9, certiorari denied, 355 U.S. 831. In such suit appellant sought spe-

cific performance of the alleged agency with the Plow Company, refusing to recognize the legal effect of holding in the two earlier cases that the agreement was unenforceable. The suit was dismissed by the District Court, which action was affirmed on appeal. Civil Action No. 16,036 is *Meredith* v. *John Deere Plow Co.*, 261 F.2d 121, certiorari denied, 359 U.S. 909. Such suit was brought by the John Deere Plow Company to restrain Meredith from commencing or prosecuting further suits against the company relitigating the same cause of action which was the basis of the preceding suits. Judgment was granted for the Plow Company, affirmed on appeal and certiorari denied. It is these last two suits that Meredith uses as basis for his claim against the appellee, although the appellee was only one of three judges in each case. Since appellee is a resident of Iowa and the other judges are nonresidents, it is obvious why suit was brought only against him.

For a history of the extensive, repetitious and exhaustive litigation commenced by the appellant against John Deere Plow Company, terminating finally in the granting of an injunction against him, see the cases cited heretofore. Four District Judges have held the appellant's claim against the John Deere Plow Company to be without merit. Four District Court judgments adverse to the claims of Meredith have been affirmed on appeal. Seven Circuit Judges have sat on one or more of such appeals. Certiorari has been applied for and denied in each case. Each one of us has examined the records in detail. Each one of us is of the opinion that the appellee could have acted no differently than he did in the two cases in which he participated as only one member of the court. We must, however, pass on appellant's various contentions.

We first consider his claim that the action commenced in state court was improperly removed to the United States

District Court. The removal of cases from state to federal court where federal officers have been sued or are being prosecuted is governed by § 1442, Title 28, U.S.C.A. Subsections (a) (1) and (3) of that section provide:

> "(a) A civil action or criminal prosecution commenced in a State court against any of the following persons may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1) Any officer of the United States or any agency thereof, or person acting under him, for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.
>
> * * * * * *
>
> (3) Any officer of the courts of the United States, for any Act under color of office or in the performance of his duties; * * *."

Appellant's complaint shows on its face that the appellee is a Judge of the United States Court of Appeals for the Eighth Circuit. It specifically alleges that the appellee, "acting in his official capacity adjudicated Civil Action No. 15666 and Civil Action No. 16036" and that said adjudications were in bad faith, etc. Clearly, the complaint itself established that the case was removable to the United States District Court under either subsection (1) or subsection (3). Additionally, appellee's petition for removal affirmatively alleged the grounds therefor and incorporated appellant's petition by reference. Appellee took all the necessary steps provided for by § 1446, Title 28, U.S.C.A. Removal from state to federal court thereupon became automatic under subsection (e) of § 1446, Title 28, U.S.C.A. which provides:

"(e) Promptly after the filing of such petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

The record leaves no room for doubt as to the propriety of the removal. It should be further pointed out that if the appellant desired to challenge the removal properly, his remedy lay in a motion for remand in accordance with the provisions of § 1447, 28 U.S.C.A., and not in the futile and useless filing of his motions in the Iowa state court. We conclude that the case was properly removed.

Appellant also attacks the representation of the appellee by the United States Attorney, claiming that the latter had no authority to act in his official capacity and that his actions were null and void. As we have heretofore pointed out, appellant's complaint is based upon appellee's official acts in connection with the performance of his duty as a Judge of the United States Court of Appeals for the Eighth Circuit. § 309, Title 5, U.S.C.A., provides that:

"* * * the Attorney General may, whenever he deems it for the interest of the United States, either in person conduct and argue any case in any court of the United States in which the United States is interested, or may direct the Solicitor General or any officer of the Department of Justice to do so."

§ 316, Title 5, U.S.C.A., provides:

"§ *316. Interest of United States in pending suits.* The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in any suit pend-

ing in any of the courts of the United States, or in the courts of any State, or to attend to any other interest of the United States."

§ 507, Title 28, U.S.C.A., provides:

"§ 507. *Duties: supervision by Attorney General*

(a) Except as otherwise provided by law, it shall be the duty of each United States attorney, within his district, to:

(1) Prosecute for all offenses against the United States;

(2) Prosecute or defend, for the government, all civil actions, suits or proceedings in which the United States is concerned;

* * * * * *

(b) The Attorney General shall have supervision over all litigation to which the United States or any agency thereof is a party and shall direct all United States attorneys, assistant United States attorneys, and attorneys appointed under section 503 of this title, in the discharge of their respective duties."

In the instant case the United States was, of course, interested and concerned in a civil action brought against a judge of one of its courts for acts performed in his official capacity. The Attorney General, exercising the discretion vested in him by the foregoing, authorized and directed the United States Attorney for the Southern District of Iowa to appear for and represent the appellee herein. An identical situation was considered by the United States Court of Appeals for the District of Columbia in *Booth v. Fletcher*, D.C., 1938, 101 F.2d 676, certiorari denied, 307 U.S. 628. That court dealt with the power and authority of the Attorney General himself as well as of his representatives to appear to protect the interests of the

United States and conduct the defense of an action commenced by a private citizen in his own name against officers (judges) of the United States government. Therein the court stated, at page 679:

> "It is not even a doubtful question whether the appearance of these officers was proper in the present case. The law provides (R. S. §§359, 367, 5 U.S.C.A. §§309, 316, 2 F.C.A. Title 5, §§309, 316):" (supra)

At page 681:

> "The law provides that the Attorney General, *whenever he deems it for the interest of the United States*, may in person, conduct and argue any case in any court of the United States in which the United States is interested, or may direct the Solicitor General or any officer of the Department of Justice to do so. It does not limit his participation or the participation of his representatives to cases in which the United States is a party; it does not direct how he shall participate in such cases; it gives him broad, general powers intended to safeguard the interests of the United States in any case, and in any court of the United States, whenever in his opinion those interests may be jeopardized."

And at pages 683-4:

> "* * * Here the action was commenced by appellee, a private citizen, in his own name, against officers of the United States Government, and the only question involved is whether the Attorney General has power to appear to protect the interests of the United States and conduct the defense of its officers."

As in *Booth* v. *Fletcher*, we think that here, too, there can be no question about the right of the United States through its Attorney General and other subordinate officers to appear for and conduct the defense of any of its officials

who have been proceeded against by reason of their official acts. We hold the appearance of the United States Attorney in behalf of the appellee to be entirely proper.

Finally, there is for consideration the action of the trial court in granting motion for summary judgment on the ground "* * * that the Plaintiff's complaint is without merit and does not state a claim upon which relief can be granted." In his answer, the appellee, while generally and specifically and fully denying the truth of appellant's allegations, points out that at all times material hereto he was acting as a judicial officer of the United States within the limits of his jurisdiction and that the allegations of appellant's complaint affirmatively so establish. It is accordingly clear upon the face of the pleadings that the acts made the basis of the claim were privileged and no civil responsibility may be predicated thereon. It is the general rule that a judge may not be held liable civilly for his acts done in the exercise of his judicial functions no matter how illegal, erroneous or irregular the acts may be. The rule is applicable even if the acts be performed maliciously, corruptly or in excess of his jurisdiction. Sound considerations of public policy require that the judiciary be independent, with freedom to make unbiased decisions in no way controlled or influenced by fear of personal consequences, such as civil suits for imagined or even real impropriety. In so stating however, we do not intimate even the bare possibility of there being any truth in the fantastic, baseless and grossly unjust charges made by the appellant in this case.

The Supreme Court of the United States in *Bradley* v. *Fisher*, 1871, 13 Wall. 335, in asserting the doctrine of judicial immunity from civil liability, stated at page 347:

> "The principle, therefore, which exempts judges of courts of superior or general authority from liability

in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well-ordered system of jurisprudence. It has been the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country. It has, as Chancellor Kent observes, 'a deep root in the common law.'

Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed. The purity of their motives cannot in this way be the subject of judicial inquiry." (13 Wall. at 347.)

It is true, as stated by the appellant in his brief, that the Supreme Court does point out at pages 351 and 352 that:

"* * * A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter."

The court states, however, at page 352:

"* * * But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend."

The Supreme Court goes on to point out at the same page that if a probate court invested only with authority over wills and settlement of estates should proceed to try parties for public offenses, jurisdiction over the offenses being entirely wanting in the court, and this known to the judge, no protection would be afforded him for such usurped authority. No such situation prevails in the instant case.

The complaint is for improper adjudication of two civil actions by the appellee "acting in his official capacity", and sets forth seven "official acts" upon which the claim of injury is based. The "distinction" referred to by the Supreme Court in *Bradley* is clearly not applicable here. The Supreme Court also stated, at page 354:

> "The exemption of judges of the superior courts of record from liability to civil suit for their judicial acts existing when there is jurisdiction of the subject-matter, though irregularity and error attend the exercise of the jurisdiction, the exemption cannot be affected by any consideration of the motives with which the acts are done."

In discussing limitations to the doctrine of official immunity, Judge Learned Hand, in *Gregoire* v. *Biddle*, 2 Cir., 1949, 177 F.2d 579, 581, stated:

> "The decisions have indeed, always imposed as a limitation upon the immunity that the official's act must have been within the scope of his powers; and it can be argued that official powers, since they exist only for the public good never cover occasions where the public good is not their aim, and hence that to exercise a power dishonestly is necessarily to overstep its bounds. A moment's reflection shows, however, that that cannot be the meaning of the limitation without defeating the whole doctrine. *What is meant by saying that the officer must be acting within his power cannot be more than that the occasion must be such as would have justified the act, if he had been using his power for any of the purposes on whose account it was vested in him.* For the foregoing reasons it was proper to dismiss the first count." (Emphasis supplied.)

Appellee was acting within his official power when he participated in the adjudications of the two cases referred to.

This court had occasion to deal with the problem of judicial immunity in *Brictson* v. *Woodrough*, 8 Cir., 1947, 164 F.2d 107, 109, wherein Judge Phillips, sitting by assignment and speaking for the court, stated:

> "* * * While we are convinced that the complaint and proposed amendments wholly failed to state a cause of action against such defendants, it becomes unnecessary to determine that question. All of the acts charged against such defendants consisted of judicial acts done by them as judges, each acting within the limits of his jurisdiction.
>
> Resting on considerations of public policy to the end that the administration of justice may be independent and based on the free and unbiased convictions of the judge, uninfluenced by apprehension of personal consequences, it is a general rule that, where a judge has jurisdiction over the subject matter and the person, he is not liable civilly for acts done in the exercise of his judicial function, even though he acts erroneously, illegally, or irregularly, or even corruptly."

The most recent word on the subject from the Supreme Court of the United States is found in *Barr* v. *Matteo*, 1959, 360 U.S. 564, 569:

> "* * * This Court early held that judges of courts of superior or general authority are absolutely privileged as respects civil suits to recover for actions taken by them in the exercise of their judicial functions, irrespective of the motives with which those acts are alleged to have been performed, *Bradley* v. *Fisher*, 13 Wall. 335, and that a like immunity extends to other officers of government whose duties are related to the judicial process. *Yaselli* v. *Goff*, 12 F.

2d 396, aff'd *per curiam*, 275 U.S. 503, involving a special Assistant to the Attorney General."

We conclude that the granting of summary judgment on the face of the pleadings was entirely proper.

Affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

VERBATIM QUOTATIONS OF AUTHORITIES CITED IN PETITION FOR WRIT OF CERTIORARI. IN No. 16528 M. M. MEREDITH VS. MARTIN D. VAN OOSTERHOUT.

No. I.

Subsections (a), (1), and (3) of Section 1442, Title 28, U.S.C.A.

* * * * * *

(a) A civil action or criminal prosecution commenced in a State court against any of the following persons may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending.

(1) Any officer of the United States or of any agency thereof, or person acting under him, for any act under color of such office or on account of any right, title, or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of revenue.

(3) Any officer of the courts of the United States, for any Act under color of office or in the performance of his duties.

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No. II.

Fifth Amendment to the United States Constitution.

* * * * * *

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury; except in cases arising in the land or naval forces, or in the Militia, when in actual

service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

* * * * * *

No. III.

Paragraph 1 of Section 2 of Article III of the United States Constitution.

* * * * * *

"The Judicial Power shall extend to all Cases in Law and Equity arising under this Constitution, the Laws of the United States, and Treaties made; or which shall be made, under their Authority;

to all cases affecting Ambassadors, other public Ministers and Consuls;

to all cases of admiralty and maritime Jurisdiction;

to Controversies to which the United States shall be a party;

to Controversies between two or more States;

between a State and Citizens of another State;

between Citizens of different States;

between Citizens of some State claiming Land under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects."

* * * * * *

Tenth Amendment to the United States Constitution.

* * * * * *

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

* * * * * *

No. IV.

Portion of the Opinion in *Bradley* v. *Fisher*, 13 Wallace 335, Field, J.. 1871. Portion is from page 352.

* * * * * *

"A distinction must here be observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject matter. Where there is clearly no jurisdiction over the subject matter any authority exercised is a usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible" * * * "Thus if a probate court, invested only with authority over wills and settlements of estates of deceased persons, should proceed to try persons for public offences, jurisdiction over the subject matter being entirely wanting in the court, and this being necessarily known to the judge, his commission would afford no protection to him in the exercise of the usurped authority."

* * * * * * *

No. V.

Section 1441 (b), Title 28 of U.S.C.A.

* * * * * * *

"Any civil action of which the district courts have original jurisdiction founded on a claimed right arising under the Constitution, treaties, or laws of the United States shall be removable without regard to citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought."

* * * * * * *

No. VI.

Portion of the Records of the United States Court of Appeals for the Eighth Circuit. A pamphlet containing some portions of the Record of said court relating to case No. 16036, *Meredith* v. *John Deere Plow Co. of Moline*, 206 F.2d 196, was filed in the Supreme Court in connection with an application for a Writ of Certiorari. Said application was denied, 346 U.S. 898.

The following quotations are taken from a certified copy of the Records of said Court of Appeals—said certified copy being contained in the pamphlet above referred to.

Page 12 and following pages in said pamphlet:

"A few years ago I went to lawyers with this story: I told them that the John Deere Plow Co., without making any claims of fault on my part, had broken a promise in which I stood in the position of the promisee (although I was not in fact the promisee). I told them further that the John Deere Plow Co. had received in exchange for this promise certain acts or promises from the promisee, which acts or promises had discommoded the promisee no little and which also had been acts or promises of considerable value to the John Deere Plow Co.

I told these lawyers that subsequently to making this promise the John Deere Plow Co. had assured me, a third party, that it had made this promise; that it considered this promise to be morally and legally binding; and that I could place implicit reliance in the supposition that the John Deere Plow Co. would keep this promise in letter and spirit. That the John Deere Plow Co. had made these representations to me for the avowed purpose of thereby inducing me to do certain things which it well knew I would not do if I thought the facts to be other than the John

Deere Plow Co. thus represented them to be. And that because I had believed these representations, I did what the John Deere Plow Co. desired I should do—which was a course I would not have pursued otherwise.

I then told these lawyers that the John Deere Plow Co's. present conduct was damaging me greatly. I told them also that I could furnish overwhelming evidence to prove the truth of the statements I had made to them.

After stating this to the lawyers, I told them I desired to hire their services for the purpose of bringing suit against the John Deere Plow Co. with the hope of securing reimbursement for some of the damage which the present conduct of the John Deere Plow Co. had caused and was causing me.

(Enclosed is a copy of the petition in my present law suit which contains a part of what I told the lawyers at that time.)

Well sir, I exaggerate to some extent, but not greatly, when I say that the reception I received from these lawyers upon telling them that I desired to bring a law suit based on the above facts—the reception I received was much like what I would expect to receive if I went to an airplane company and told it I desired to charter an airplane with which to make a trip to the moon.

In all I talked with nine different lawyers and with one single exception they all told me the same thing, to wit:—that my proposal was hopelessly impracticable; that I would be just butting my head against a stone wall; that I better had just pocket my loss and forget about it. The one exception did not tell me to pocket my loss and forget about it, but he did indicate that he thought my chances of success were very, very poor.

As you might expect, this kind of universal reception disconcerted me no little. Also it considerably surprised me. But what really startled me was the reason which I understood these lawyers to give for their attitude. As I interpreted their remarks, they all took the position that the judges, for reasons of their own, were opposed to promisors being held to their promises in cases like mine and so refused to hold them. And that the legal aspect of the matter was immaterial under such conditions.

Of course not all the lawyers said exactly the same thing. I would characterize as the mildest statement, that one of the lawyers, who in a noticeably careful and guarded manner, said that in cases like mine the judges seemed to be very unfair to the retailer. I would characterize as the most unguarded and most extreme statement that one of the lawyers who said that in cases like mine the judges had a determination amounting to a phobia not to hold the promisor to his promise or to any other similar commitment. He predicted that if I persisted in my suit I would find that if necessary the judges would suppress facts, distort facts, employ obvious fallacies and transparent sophistry—would do anything that circumstances required but in no event would they permit the John Deere Plow Co. to be held responsible for its promises or other commitments. There might have been some who hedged a little more than the one I have characterized as the mildest, but roughly speaking the statements of the other lawyers, I would say, were with varying degrees of frankness somewhere between these two extremes.

I was greatly puzzled. First of all I didn't take at face value what these lawyers told me they thought about the judges. It all sounded too extreme and too radical to be credible. Finally, as the nearest approach to a rational explanation for this practically unanimous opinion of the

lawyers, I adopted this theory. I concluded that all of these lawyers readily had discerned some flaw in my legal position which I had been unable to see. But that experience probably long since had taught them it was useless and often unpleasant to try to tell a fellow looking for a lawsuit that he didn't have a case. That instead, the only way to get rid of him was to lay everything onto the perversity, or worse, of the judges. That was one of a lawyer's trade secrets, I concluded—one of those things handed down from father to son, so to speak.

Nevertheless I still wanted my law suit; and, omitting details and explanations, I finally got one started. Naturally, after all these pessimistic predictions of the lawyers, I was braced for an adverse verdict. But I never seriously doubted that my allegations of fact would be examined, my legal arguments weighed, and if my contention was found faulty, the defect would be pointed out.

However, the treatment I received was so different from the above that I was shocked no little. Then for the first time I began to think these lawyers really had meant what they said. That their utterances to me about the judges had in fact been expressions of their genuine sentiments.

When my case got in court the defendant asked to have it dismissed on the ground that my petition failed to allege facts sufficient to constitute a cause of action.

The defendant's motion was sustained; and in stating his reasons for sustaining it, the judge, so it seemed to me, buttressed his opinion with an "obvious fallacy." This was a statement which to me seemed to be a statement to the effect that the Constitution is not the supreme law of the land. He said that if A and B had exchanged promises to the effect that they would remain business associates

until both agreed that the association should be dissolved, that then if this were a legally valid agreement, A could force B to labor in the business against his will for the balance of his life. So far as I could see, the only way A could do this legally would be by securing an order from a Court of Equity for specific performance. And if such an order were valid, then an order of a Court of Equity takes precedence over the Constitution. Because of course the thirteenth Amendment prohibits involuntary servitude except as punishment for a crime. Yet you will find that in my case, Meredith vs. John Deere, the judge advanced this as one of the reasons why John Deere should not be held to its promise. You will find also that judges have been advancing this argument for some fifty years as a reason why a retailer can't hold a promisor to his promise.

I then appealed to the Circuit Court of Appeals. This Court sustained the lower Court. In doing so, this Court also, in my opinion, made use of an "obvious fallacy."

This Court quoted correctly from my petition to the following effect, to-wit "Defendant offered that if the owner would desist competitive hostilities against defendant and would instead become defendant's dealer, then said owner could remain defendant's dealer for so long as he desired. That only by voluntary relinquishment, forfeiture through gross fault, or retirement of defendant from business would said owner cease to be defendant's dealer." After making, in effect, said quotation, the Court then remarked, in effect, that the agreement resulting from such offer and acceptance *obviously* was not a contract.

Now I offer it as a self-evident fact, that when one desists some legitimate activity in which one is engaged and then changes one's status to a different status to what it was before—that when one does those things, then one per-

forms the act of giving legal consideration. Accordingly, I think it a legitimate transposition to state the Court's above remark as follows:—at common law the exchange of consideration for a promise does not create a legally binding agreement; and the proposition that such an exchange does not—said proposition is such a clear, plain, and self-evident proposition that it is an obvious proposition.

As I said before, when a Court states that proposition, then in my opinion the Court thereby states an "obvious fallacy."

I am confirmed in my opinion that said remark of the Court was an "obvious fallacy" by the reflection that I believe the following two propositions to be true, viz: First, when the President offers an individual a Federal Judgeship, then the President in effect offers that if this individual will desist the practice of law or whatever other activity he is engaged in and will become a judge, that he can remain a judge for so long as he desires. That only by voluntary retirement, forfeiture through gross fault, or abolishment of the Court by Congress will said individual cease to be a judge. Second, when a man proposes marriage to a woman, he then offers that if she will change her status from that of a single person to that of his wife, then she can retain the status of his wife for so long as she desires. That only by voluntary relinquishment, forfeiture through gross fault, or by his death will she cease to have the status of his wife.

Another circumstance persuades me that in my petition I did not state such an obvious legal nullity as the Court held that I did. Said circumstance is that in the case of *Myers* v. *Kaiser Frazer*, 178 F.2d 291, this very same Court of Appeals for the Eighth Circuit held that a legally identical agreement, made to serve the same purpose, was a

contract. In this case a retailer and a concession owner had agreed to remain business associates until one notified the other that he did not desire longer to be an associate. In this case the whole decision turned upon the point as to whether or not this was a legally valid agreement. The Court held that it was; and that its provisions were legally binding.

I cited this case in my brief but the Court gave said citation no consideration.

Accordingly, I think I am justified in saying that the Circuit Court of Appeals for the Eighth Circuit is equipped with two distinct lines of precedents, holding oppositely.

In *Myers* v. *Kaiser Frazer*, above, the circumstances were very unusual in that it was to the advantage of the retailer to have the agreement declared a nullity. Usually the retailer is arguing to have the agreement declared valid. Because the retailer is generally in the position of a share cropper who is trying to keep the landlord from dispossessing him at harvest time—trying to get his share of the crop according to agreement after working all season to produce it. *Myers* v. *Kaiser Frazer*, above, is the only case I know of where it would have been to the advantage of the retailer to have the agreement declared a nullity. And in this instance, after about fifty years of holding such agreements legally void, the Court had no difficulty in seeing that a promise exchanged for consideration resulted in a legally valid agreement. But when I later came up with a legally identical agreement, made to accomplish the same objective, the Court swung back to its original position that such agreements were obviously no good at law.

I next petitioned for a rehearing giving as one of my grounds the fact that the Court had overlooked entirely my allegations which were calculated to show that the

defendant was liable on the grounds of estoppel in addition to those of contract. But my petition was denied without comment—which I understand is the custom.

I next filed a suit in Equity asking for specific performance, and making my chief issue that of estoppel. My claim was that even though the agreement was legally void, even so, defendant had represented to me, a third party, that defendant regarded said agreement as binding, both morally and legally and that I could be assured defendant would abide by its promise which it had made in said agreement. That defendant had avowed it was making said representations to me for the purpose of thereby influencing my actions. That defendant did by said representations thereby influence my actions and in the manner which defendant had intended. That as a result of being thus influenced, I did what otherwise I would not have done. And that now defendant was subjecting me to loss and injury by disappointing the expectation upon which I then had acted.

I gave this issue of estoppel the chief place in my brief. Also in my oral argument before the Court I devoted my entire time to the issue of estoppel—making no mention whatsoever of any other issue.

Defendant, on the other hand, made no mention whatsoever of the issue of estoppel in its brief. Nor did defendant once mention the issue of estoppel in its oral argument before the Court.

The Court again dismissed my petition. The Court in so doing utterly ignored the issue of estoppel; and moreover so contrived its Opinion that said Opinion gave no hint or indication that there were any allegations in my petition which might raise the issue of estoppel or that the issue of estoppel ever had been referred to by me in

my brief and oral argument. All this despite the fact that I plainly had labeled in my petition certain allegations as being made for the purpose of claiming that the defendant was estopped from asserting that it was not bound to perform its promise. Also despite the fact that both in my brief and in my oral argument I had cited the following passage from a Supreme Court decision regarding the basis of the doctrine of estoppel, to wit: "The vital principle is" says the Supreme Court, "that he who by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted." *Dickinson v. Colgrove,* 100 U.S. 578.

All that defendant had done, so far as the issue of estoppel was concerned, was to ask that my petition be dismissed because it failed to allege facts adequate to constitute a cause of action, even if proved.

Under those circumstances would a person be allowed to wonder whether the Court considered a naked request of the John Deere Plow Co. as being more potent than a pronouncement of the Supreme Court?

The technique employed by the Court to ignore the issue of estoppel was the following: The Court stated that in its opinion my case presented exactly the same legal issues as were presented in certain other cases previously decided; and that the Court would make therefore the same decision in my case that it had made in these other cases.

Now even the most casual inspection of these other cases, thus referred to by the Court, will show that the issue of estoppel formed no part of those cases whatsoever. In fact a more careful inspection will reveal that so remote was the issue of estoppel in those cases that not even

once in any of those cases does the verb "estop" or the noun "estoppel" ever appear. At least if you can find any of those words there, then your eyes are sharper than mine.

The method used by the Court to give the impression that the issue of estoppel never had been raised in my case was the following: the Court in effect said it was deciding against me because it plainly appeared that the agreement was one which permitted the defendant to retire at will from the association—that defendant's promise to the contrary was ineffective, legally.

Of course, you understand, as I said before, my point was that defendant was estopped because of representations made to me subsequently to the agreement—was estopped from claiming the right to retire at will from the association regardless of the validity of defendant's promise in the agreement.

I also had made the claim that the agreement itself prohibited the defendant from retiring at will from the association.

There were two issues to be decided. The Court reported that it was deciding one of them against me; and thereupon dismissed my petition. It made no mention of any other presented for its decision.

Well, what I have been relating are some of the experiences which I had when I went to Court—experiences which made me wonder if those lawyers really hadn't meant what they said.

* * * * * *

Verbatim Extract from Page 33 of the Pamphlet Previously Mentioned.

* * * * * * *

Motion by Defendant for an Order to Supplement and Clarify a Previous Order.

(Filed in U.S. District Court May 7, 1958.)

1.

Comes now the defendant and states to the Court that he is unable to ascertain with reasonable confidence the scope and the limits of the Order of an Injunction issued by this Court in said case on April 30, 1958.

Wherefore defendant respectfully asks, that for his guidance the Court issue a Supplementary and Clarifying Order which will constitute a ruling upon each of the circumstances hereinafter presented.

2.

First Circumstance: Defendant recently has discovered evidence which he believes is sufficient to prove that when plaintiff in 1919 made an offer to A (C. P. Meredith), ostensibly for the purpose of making a Contract with him—that such offer was not made in good faith but was, instead the initial move of plaintiff to execute a premeditated scheme to swindle A; and that plaintiff's current acts which are injuring defendant—that said acts are in truth and in fact the consummating acts of the aforesaid premeditated scheme to swindle and to defraud A.

Defendant believes that he now owns and is the beneficiary of all the rights which A acquired as a consequence of being thus victimized.

Defendant further believes that the aforesaid evidence is sufficient to prove that in the year 1924 plaintiff, in a

similar manner, initiated a permediated scheme to swindle defendant.

Defendant believes, that if given the opportunity, he can prove that the said current injurious acts of plaintiff are, in truth and in fact, the consummating acts of the aforementioned scheme of plaintiff's to swindle A and to swindle defendant.

Defendant desires to start a court action wherein he will ask remedy and relief from the injuries inflicted upon him by plaintiff's aforesaid alleged swindles.

Question: Does the aforesaid Order forbid defendant from undertaking such court action?

3.

Second Circumstance: In 1932 the aforesaid A (C. P. Meredith) died.

On January 1, 1937, one B, acquired sole ownership of the aforesaid Atlantic store.

On January 1, 1937, said B granted to defendant a provisional option to purchase, at some future date, said Atlantic store from him (B).

About January 20th, 1937, plaintiff, knowing of said provisional option, urged defendant to assist, at his own expense, said store to create a commercial demand, within its trade territory, for a certain new model of John Deere tractors. As a part of said urging, plaintiff repeated its often-repeated promise concerning the nature of and the during period of the business relationship then existing between it and said store.

Assenting to plaintiff's said request, defendant did thus assist said store, which same was an exertion which he was under neither legal nor moral obligation to perform.

In November, 1937, plaintiff first learned that one, C, had been advising, and then was advising, defendant to discontinue the aforesaid assistance. C's reason: C believed plaintiff not improbably would default upon its aforesaid often-repeated promise.

Whereupon, in November, 1937, plaintiff offered defendant that if defendant would disregard C's aforesaid advice and, instead, would not discontinue the aforesaid assistance, then plaintiff would guarantee defendant that it (plaintiff) never would, under any circumstances whatsoever, default upon its said promise; and that furthermore plaintiff would insure defendant against any loss whatsoever which defendant might suffer in case plaintiff did, at some future time, default upon its said promise.

Thereupon, in November, 1937, defendant accepted said offer; and in exchange therefor, refrained from discontinuing his said assistance, which, at that time, he was giving said Atlantic store.

Question: Does the aforesaid Order prohibit plaintiff from initiating any court action calculated to obtain damages or other relief based upon the allegation that plaintiff now is in default upon its said promise to guarantee and to insure?.

4.

Third Circumstance: Defendant believes the newly discovered evidence, previously referred to, is sufficient to show that plaintiff did not make the aforesaid offer, to become a guarantor and an insurer in good faith; that plaintiff never intended to honor the obligation presumably thus incurred; that, instead, the sole purpose and intent of said offer and promise to guarantee and to insure—that the sole purpose of the same was to swindle defendant.

Question: Does the aforesaid Order prohibit defendant from undertaking any court action calculated to secure him redress or relief from the injuries received because of plaintiff's alleged swindle executed in November, 1937?

Respectfully submitted,

Merritt M. Meredith,
301 West Sixth Street,
Atlantic, Iowa,
Defendant.

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Verbatim Extract from Page 36 of Aforesaid Pamphlet.

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Order Overruling Motion by Defendant to Supplement and to Clarify a Previous Order.

(Filed in U. S. District Court, May 13, 1958.)

Defendant, on May 7, 1958, has filed what he terms a "Motion by Defendant for an Order to Supplement and to Clarify a Previous Order". In same he asks for a supplemental order stating whether or not he can bring further actions against plaintiff. It is the opinion of the Court that the Judgment and Order for an Injunction definitely prohibits defendant from starting any new action as evidently contemplated by his present motion under consideration.

It is therefore Ordered that the "Motion by Defendant for an Order to Supplement and to Clarify a Previous Order", filed herein on May 7, 1958, be, and the same is hereby overruled.

Dated this 13th day of May, 1958.

Edwin R. Hicklin,
United States District Judge.

* * * * * * *

Petitioner never previously had brought any of the aforesaid contemplated actions in any Court. (Record in this application, Pages 10 and 11):

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* * * "a judgment that a declaration is bad in substance * * * can never be pleaded as a bar to a good declaration for the same cause of action.

The judgment is, in no just sense, a judgment upon the merits."

Gilman v. *Rives*, 10 Peters 298, 301, Story, J., 1836.

The above extract was cited by petitioner in his brief which now forms part of the records of the Circuit Court of Appeals for the Eighth Circuit. Said brief was filed in case No. 16,036, *Merrit M. Meredith, Appellant*, v. *John Deere Plow Co. of Moline, Illinois, Appellee.*

The Court of Appeals ignored said citation in its Opinion.

* * * * * *

Page 37 of the pamphlet previously referred to—a pamphlet containing portions of the Record of the United States Court of Appeals for the Eighth Circuit—all of same having been certified to by the Clerk of said Court of Appeals.

Following is a Summary of the Principal Facts Considered and a Statement of the Procedure Followed in the Hearing on April 15, 1958, which Resulted in the Issuance of the Injunction by the United States District Court for the Southern District of Iowa, Western Division on April 30, 1958:

The Court first asked appellee's attorneys to make a statement which would explain the business which occasioned the appearance of appellee and appellant before the Court.

Raymond A. Smith, appellee's attorney, then made a statement which was substantially identical with the allegations of fact and with the accusations contained in appellee's Petition for an Injunction, filed in this case.

The Court then asked appellant if he had any adverse comment to make concerning Attorney Smith's aforesaid statement.

Appellant replied that his principal objection was to the charge that in initiating and engaging in the aforesaid prior litigation, detailed by Attorney Smith, he had been actuated by any motives other than legitimate and ethical ones. He asserted that all his aforesaid legal moves had been legal, proper, and ethical; and only such as were sanctioned by law. He next denied that past litigation had caused appellee any unreasonable vexation and expense. He conceded that past litigation probably had caused appellee some vexation and expense; and that contemplated future litigation probably would cause appellee some vexation and expense; but he argued that some vexation and expense is an inescapable consequence of any litigation. He called attention to that portion of his Answer wherein he had alleged that the somewhat protracted nature of prior litigation had been chiefly caused by the nature of appellee's defense. That at all times it had been within appellee's power to cut said litigation short by merely raising no objection to his having an opportunity to have his grievance adjudicated by a Court trial.

Appellant then called attention to that part of appellee's Petition which consisted of a copy of the first draft of a letter which appellant once had contemplated writing. Appellant stated that appellee's apparent motive in bringing said first draft of a contemplated letter to

the Court's attention was evidently to advocate that the Court, in a punitive manner, should exercise a form of "thought control"—should penalize appellant for harboring the thoughts therein expressed. He said that if such was the Court's intention, he wished to protest such action. The Court stated that such was not its intention; and thereupon ordered that no further reference be made to said first draft of a contemplated letter.

The Court asked appellant if he could state any reason why said contemplated Injunction should not be issued. Appellant replied that one reason he could state was that the validity of what he considered his strongest point had never been adjudicated—that the argument which he believed to be his best one had been utterly ignored by the Courts in all prior litigation. Said point was this:—According to a well established rule of the Common Law, appellee was Estopped from confronting appellant with claim that it had a right to break its promise—was Estopped from confronting appellant with that claim in a legal action undertaken by appellant to force appellee to honor that promise, even though said promise was, in truth and in fact, legally invalid. Appellant said that consistently, throughout this litigation, he had argued that appellee thus was Estopped. He said that in one of his Petitions he had labeled certain of his allegations as being allegations made for the express purpose of raising the issue of Estoppel. He said that when the validity of this Petition was being considered by the Eighth Circuit Court of Appeals, he had devoted the entirety of his oral argument to the issue of Estoppel, making no mention of any other point at all. But that, in its subsequent decision, said Court had ignored the issue of Estoppel entirely, giving no indication in its decision that any facts were involved which might occasion the application of the Doc-

trine of Estoppel. He then stated what those facts were: and pointed out how closely they resembled the circumstances which the Supreme Court in the case of *Dickinson v. Colgrove*, 100 U.S. 578, had stated to be the circumstances which would call for the application of the Doctrine of Estoppel.

The Court said it would take up the matter of the Motion filed by appellant, on January 14, 1958, in Civil Action No. 1-12. This was a Motion for the Court to Nullify the Dismissal of the first Petition appellant had filed concerning his grievance against appellee. Reason for that Motion—The individual who had dismissed that Motion had not been a Federal Judge, but, instead, had been a private individual.

The Court stated that it would tell appellant in advance that it was not going to grant that Motion under any conditions, but that appellant could speak in its advocacy if he wanted to.

Appellant then protested that he did not come prepared to advocate that Motion since he thought the present Hearing was a Hearing solely to determine whether or not he should be partially disfranchised. He said he did not have with him any evidence to prove the basic facts involved, but he asked the Court to take judicial notice of those facts since they were a matter of general knowledge. The Court refused. Appellant stated that anyway the following purported facts had been published in the newspapers:—A vacancy had occurred in the judgeship of this Court while the Senate was in session. The President had nominated Carroll O. Switzer to fill up this vacancy. The Senate had failed to confirm this nomination. The President, after the Senate had recessed, had appointed said Carroll O. Switzer to fill up this vacancy until the close of the next session of the Senate. Carroll O. Switzer

had served as Judge during this period, but Congress never had appropriated money to pay him for said services. Appellant quoted the applicable portion of the Constitution, which same states in effect that the President may make temporary appointments to fill up vacancies which "may happen" during the recess of the Senate. He argued that the Constitution permits the President to make temporary appointments only in those instances where the vacancies originate during the recess of the Senate; and only, also, when said vacancies exist by chance. He pointed out that in this instance the vacancy did not originate during the recess of the Senate. Nor, so far as the President was concerned, did it exist by chance. He quoted Webster's Dictionary to the effect that the verb "to happen" means to occur "by chance". Appellant cited passages in the Federalist which tend to prove that the power of appointment was one which the Senate shared jointly with the President; and passages which tend to prove that the only vacancies, which the President is entitled to fill up with temporary appointments, are casual vacancies. He argued that if the appointment of Carroll O. Switzer was a valid appointment, then a President, if he so desired, could deprive the Senate of its joint power of appointment—could so deprive the Senate throughout the President's entire term of office. Appellant argued that the reputations of Benjamin Franklin and other members of the Constitutional Convention—their reputations for sagacity tended strongly to refute the supposition that they framed a Constitution which was so defective that any President of ordinary perspicacity could circumvent their intention of giving the Senate joint and concurrent power of appointment.

At the conclusion of appellant's aforesaid remarks, the Court gave him ten days in which to produce some

legal authority which tended to show that his position had color of merit.

Appellant next said that this was the only case he ever had heard of or read about of which the following truthfully could be said: The facts, or assumed facts, were that the promisor had made a promise in exchange for legal consideration. The promisor then had broken his promise with the consequence of thereby injuring the promisee seriously and enriching the promisor substantially. Yet the promisee was held to have no legal recourse whatsoever; and was given no intelligible reason explaining why he had not. Appellant said these statements could not truthfully be made about *Dupont* v. *Reno*, 64 F.2d 224, because the decision in that case was predicated upon the preliminary holding to the effect that Dupont had not received legal consideration for the promise it had made to Reno.

The Court said that appellant had been given an intelligible reason for said holding. He had been told that the agreement resulting from the exchange of legal consideration for a promise was a void and unenforceable one.

Appellant replied that the Court had held the agreement to be a void and unenforceable one because it possessed "an obvious congenital weakness". He said the phrase "Obvious congenital weakness" was unintelligible to him. He had been unable to find that it was a legal phrase with any special legal meaning; and he had received no help from consulting the dictionary.

Appellant said that the proposed injunction would conflict with the Seventh Amendment to the Constitution. That Amendment forbids the Federal Government from impairing the right of a Jury trial in cases where the amount involved exceeds twenty dollars. At the time this

Amendment was adopted a plaintiff who filed a good Declaration or Complaint, was entitled to a jury trial if he asked for monetary damages even though previously he had filed a bad Declaration or Complaint concerning the same grievance. The proposed Injunction would impair that right.

The Court remarked that if he gave weight to that objection then the District Court would be assuming to overrule the Court of Appeals.

Appellant expressed the opinion that such would not necessarily be the case. The Eighth Circuit Court of Appeals had not held that dismissal of a Complaint constituted an adjudication of the cause of action. It merely held that such Dismissal constituted an adjudication of the "claim," and he argued that the word "claim" did not necessarily mean "cause of action."

Appellant said that in the oral argument before the District Court concerning the dismissal of the first Petition, Attorney Shotwell, attorney for appellee, who made the only argument for appellee, had made no defense. He had given, as his reason for doing so, the fact that he had been unable to figure out from appellant's Petition why appellant ever would expect appellee to keep its promise. Therefore, since he could imagine no reason why appellee should keep its promise, he was at a loss for reasons why it hadn't kept it.

Attorney Smith, attorney for appellee, then said that an inspection of appellee's Brief, filed in that case, would disclose that appellee had stated many reasons and had cited many authorities to show why it was not legally bound to keep it.

The Court then said it had given sufficient time to this matter; and, glancing at the clock, remarked that it thought it had been indulgent with the time alloted to appellant.

Appellant didn't look at the clock but has the impression it was about four P.M. The Hearing commenced about 1:30 P.M.

FILED

FEB 17

JAMES R. BROWNING, CLERK

No. 719

In the Supreme Court of the United States

OCTOBER TERM, 1960

M. M. MEREDITH, PETITIONER

v.

MARTIN D. VAN OOSTERHOUT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ARCHIBALD COX,
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WILLIAM H. ORRICK, JR.,
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Department of Justice, Washington, D. C.

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MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This civil action by petitioner seeks a money judgment against Judge Martin D. Van Oosterhout, of the Court of Appeals for the Eighth Circuit. Petitioner claims that respondent, while "[a]cting in his official capacity * * *," had adjudicated dishonestly and in bad faith two other civil actions involving petitioner (R. 1-3).[1] The gist of petitioner's complaint

[1] "R. —" refers to pages of the Record printed for use in the Court of Appeals.

seems to be that respondent, as one of three judges on each of two panels which heard and determined two appeals brought to the Eighth Circuit by petitioner, voted to decide those appeals against petitioner on the basis of a version of the facts to which petitioner cannot subscribe, and on the basis of a rule of law petitioner claims wrong and dishonest.[2]

But, irrespective of the form in which petitioner's complaint against respondent is cast, it has long been settled that a judge cannot be held liable in damages to a litigant against whom he rules. In reaffirming this principle recently, this Court noted that it "early held that judges of superior or general authority are absolutely privileged as respects civil suits to recover for actions taken by them in the exercise of their judicial functions, irrespective of the motives with which those acts are alleged to have been performed. *Bradley* v. *Fisher*, 13 Wall. 335 * * *." *Barr* v. *Mateo*, 360 U.S. 564, 569; see *Brictson* v. *Woodrough*, 164 F. 2d 107 (C.A. 8); *Gregoire* v. *Biddle*, 177 F. 2d 579 (C.A. 2).

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[2] Petitioner concedes that the rule of law applied in his case is "universally" applied by courts to his situation, but he asserts nonetheless that "[i]t is a widely held opinion that when judges make this ruling they thereby perform their official acts dishonestly and in bad faith" (Pet., p. 8).

We think it clear that this principle is dispositive here, and was correctly invoked by both the district court and the court of appeals. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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FEBRUARY, 1961.

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